

$\frac{3}{8}$  inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with all other required markings, in letters at least  $\frac{3}{8}$  inch in height.

[50 FR 39074, Sept. 27, 1985, as amended at 54 FR 27860, July 3, 1989; 55 FR 24221, June 15, 1990; 56 FR 40223, 40224, Aug. 14, 1991; 57 FR 20738, May 15, 1992; 59 FR 15838, Apr. 5, 1994; 59 FR 31120, June 17, 1994; 61 FR 13390, Mar. 27, 1996; 61 FR 31391, June 20, 1996; 63 FR 16039, Apr. 1, 1998; 64 FR 19031, Apr. 19, 1999; 65 FR 15212, Mar. 22, 2000; 67 FR 16294, Apr. 5, 2002; 68 FR 17264, Apr. 9, 2003; 68 FR 48255, Aug. 13, 2003; 69 FR 15649, Mar. 25, 2004; 69 FR 19756, Apr. 14, 2004]

### Subpart—Grade and Size Regulation

#### §916.356 California Nectarine Grade and Size Regulation.

(a) During the period beginning April 1 and ending October 31, no handler shall ship:

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle  $\frac{3}{8}$  inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle  $\frac{1}{2}$  inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That during the period April 1 through October 31, 2004, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

(i) Free from insect injury which has penetrated or damaged the flesh; split pits which cause an unhealed crack or one or more well healed cracks which, either singly or in the aggregate, are more than  $\frac{3}{8}$  inch in length; mold, brown rot, and decay which has affected the edible portion; and

(ii) Free from serious damage due to skin breaks, cuts, growth cracks, bruises, or other causes. Damage to any nectarine is serious when it causes a waste of 10 percent or more, by volume, of the individual nectarine.

(iii) *Tolerances*. Not more than 10 percent, by count, of the nectarines in any one container may be below the requirements which are prescribed by this paragraph, including not more than 5 percent, by count, for any one defect, except split pits. An additional tolerance of 10 percent, by count, of the nectarines in any one container or bulk lot may contain nectarines affected with split pits. This means a total tolerance of 20 percent is allowed for all defects, including split pits, but not to exceed 15 percent for split pits alone.

(iv) The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency. The Federal or Federal-State Inspection Service will use the maturity guides listed in table 1 to paragraph (a)(1)(iv) in making maturity determinations for the specified varieties when inspecting to the "well matured" level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Tom Grand variety of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in table 1 to paragraph (a)(1)(iv) may be granted during the season to reflect changes in crop, weather, or other conditions that

would make the specified guides an inappropriate measure of “well matured.”

TABLE 1

Column A variety	Column B maturity guide
Alshir Red .....	J
April Glo .....	H
August Glo .....	L
August Lion .....	J
August Red .....	J
Aurelio Grand .....	F
Autumn Delight .....	L
Big Jim .....	J
Burnectone (Spring Ray) .....	L
Diamond Bright .....	J
Diamond Jewel .....	L
Diamond Ray .....	L
Earliglo .....	I
Early Diamond .....	J
Early Red Jim .....	J
Early Sungrand .....	H
Emelia .....	J
Fairlane .....	L
Fantasia .....	J
Firebrite .....	H
Fire Sweet .....	J
Flame Glo. ....	L
Flamekist .....	L
Flaming Red .....	K
Flavortop .....	J
Gee Sweet .....	L
Grand Diamond .....	L
Grand Sweet .....	J
Gran Sun .....	L
Honey Blaze .....	J
Honey Dew .....	B*
Honey Fire .....	L
Honey Kist .....	I
Honey Royale .....	J
July Red .....	L
June Brite .....	I
June Candy .....	K
Juneglo .....	H
Kay Diamond .....	L
King Jim .....	L
Kism Grand .....	J
Late Le Grand .....	L
Late Red Jim .....	J
Mango .....	B*
May Diamond .....	I
May Fire .....	H
Mayglo .....	H
May Grand .....	H
May Kist .....	H
Mid Glo .....	L
Moon Grand .....	L
Niagra Grand .....	H
P-R Red .....	L
Prince Jim .....	L
Prima Diamond XIII .....	L
Red Delight .....	I
Red Diamond .....	L
Red Fred .....	J
Red Free .....	L
Red Glen .....	J
Red Glo .....	I
Red Jewel .....	L
Red Jim .....	L
Red May .....	J
Regal Red .....	K
Rio Red .....	L

TABLE 1—Continued

Column A variety	Column B maturity guide
Rose Diamond .....	J
Royal Giant .....	I
Royal Glo .....	I
Ruby Diamond .....	L
Ruby Grand .....	J
Ruby Sun .....	J
Ruby Sweet .....	J
Scarlet Red .....	K
September Free .....	J
September Grand .....	L
September Red .....	L
Sheri Red .....	J
Sparkling June .....	L
Sparkling May .....	J
Sparkling Red .....	L
Spring Bright .....	L
Spring Diamond .....	L
Spring Red .....	H
Spring Sweet .....	J
Star Brite .....	J
Summer Beaut .....	H
Summer Blush .....	J
Summer Bright .....	J
Summer Diamond .....	L
Summer Fire .....	L
Summer Grand .....	L
Summer Lion .....	L
Summer Red .....	L
Sunburst .....	J
Sun Diamond .....	I
Sunecteight (Super Star) .....	G
Sun Grand .....	G
Sunny Red .....	J
Tom Grand .....	L
Zee Glo .....	J
Zee Grand .....	I

NOTE: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above. On varieties with less than 10 percent surface ground color required to determine California Well-Matured, the stem cavity color will be utilized to make the determination. As a guide, stem cavities for most varieties should be at least yellowish-green as defined by the H maturity guide. Confirmation may be further established by using other California well matured characteristics. \*Predominant ground color must be breaking yellowish green.

(v) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

(2) Any package or container of Mayglo variety nectarines through May 5 of each year; or April Glo, or Mayfire variety nectarines, unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(2)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 100 nectarines.

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Crimson Baby, Earliglo, Early Diamond, or May Kist variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(3)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines.

(4) Any package or container of Arctic Rose, Arctic Star, Burnectone (Spring Ray), Diamond Bright, Juneglo, June Pearl, Kay Glo, Kay Sweet, May Diamond, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim I, Red Delight, Red Roy, Rose Diamond, Royal Glo, Sparkling May, White Sun, or Zee Grand variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(4)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 83 nectarines.

(5) Any package or container of Mango or Red May variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 84 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(5)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

(6) Any package or container of Alta Red, Arctic Blaze, Arctic Gold, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Fire, August Glo, August Lion, August Pearl, August Red, August Snow, Big Jim, Bright Pearl, Bright Sweet, Candy Gold, Candy Sweet, Diamond Ray, Early Red Jim, Emelia, Fire Pearl, Fire Sweet, Flame Glo, Flaming Red, Grand Diamond, Grand Pearl, Grand Sweet, Honey Blaze, Honey Fire, Honey Kist, Honey Royale, July Pearl, July Red, June Lion, Kay Pearl, King Jim, Late Red Jim, P-R Red, Prima Diamond IX, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Prima Diamond XXVIII, Red Diamond, Red Glen, Red Jim, Red Pearl, Regal Pearl, Regal Red, Royal Giant, Ruby Bright, Ruby Diamond, Ruby Pearl, Ruby Sweet, Scarlet Red, September Bright (26P-490), September Free, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Sweet, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sunny Red, Sun Valley Sweet, Sweet White, Terra White, White September, or Zee Glo variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the box, or if the nectarines are "well matured," not more than 84 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(6)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines or if the nectarines are "well matured" not more than 75 nectarines.

(7) During the period April 1 through May 31 of each fiscal year, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(7)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines.

(8) During the period June 1 through June 30 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(8)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 83 nectarines.

(9) During the period July 1 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the box or, if the nectarines are "well matured," not more than 84 nectarines in the box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(9)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines or if the nectarines are "well matured" not more than 75 nectarines.

(b) The following procedure shall be used in determining whether nectarines meet the minimum size requirements specified for each size category in this section applying a 16-pound sample. A sample consisting of one-half of the number of fruit specified for a 16-pound sample for a particular size category shall be used, provided such sample weighs at least eight pounds. When one-half the specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit shall be used to determine the sample weight. If a sample fails with respect to minimum size requirements on the basis of an 8-pound sample, a 16-pound sample shall be used to determine if the fruit meets the minimum size requirements.

(c) *Container tolerances.* The contents of individual packages in the lot are subject to the following limitations, provided the averages for the entire lot are within the tolerances specified in this part:

(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages shall have not more than double the tolerance specified.

(2) For packages which contain 10 pounds or less, individual packages are not restricted as to the percentages of defects.

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(d) As used herein, *U.S. No. 1, mature*, and *standard pack*, mean the same as defined in the United States Standards for Grades of Nectarines [7 CFR 51.3145 through 51.3160]; and *No. 22D standard lug box* means the same as defined in section 1380.19 (17) of the "Regulations of the California Department of Food and Agriculture". *Well matured* means a condition distinctly more advanced than *mature*.

[59 FR 15838, Apr. 5, 1994, as amended at 60 FR 30997, June 12, 1995; 61 FR 13391, Mar. 27, 1996; 61 FR 19164, May 1, 1996; 61 FR 26073, May 24, 1996; 61 FR 31006, June 19, 1996; 61 FR 31391, June 20, 1996; 62 FR 15360, Apr. 1, 1997; 62 FR 50859, Sept. 29, 1997; 63 FR 16039, Apr. 1, 1998; 65 FR 39513, June 27, 2000; 66 FR 17484, Apr. 2, 2001; 66 FR 39620, Aug. 1, 2001; 67 FR 16295, Apr. 5, 2002; 68 FR 17264, Apr. 9, 2003; 69 FR 15649, Mar. 25, 2004; 69 FR 41128, July 7, 2004; 69 FR 44460, Aug. 26, 2004]

### PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

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